

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-64	Time filed:	
Changed to Admin. Code Ref. (R no.):			

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Clyde Ormond	801-530-6254	801-530-6511	cormond@utah.gov

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2.	Title of rule or section (catchline):
	Deception Detection Examiners Licensing Act Rules
3.	Type of notice:
	New ___; Amendment ___; Repeal ___; Repeal and Reenact ___
4.	Purpose of the rule or reason for the change:
	The Division and Deception Detection Examiners Licensing Board reviewed the existing rule, which has not been amended since August 1997, and are proposing changes to the rule to conform with current profession practices and to further clarify statute provisions.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	Yes ___; No XX
6.	Summary of the rule change:

	<p>Throughout the rule, plural has been changed to singular. Section 102-Definitions: Additional definitions which appear in the rule are being added. New definitions include: "clinical testing", "comparison question", "deception detection case file", "experienced deception detection examiner", "post conviction sex offender testing", "screening exam", "specific issue/single issue examination" and "pre-employment exam". Section 201 is being added to create the Deception Detection Education Peer Committee which will be given the responsibility to conduct oral interviews to evaluate a deception detection intern's performance during an internship. Section 302a-Application Requirements: Deleted the requirements for an applicant for licensure to submit two fingerprint cards and a fee to cover the cost of a Bureau of Criminal Investigation records check. Section 302b-Education Requirements: Added in paragraph (2) that equivalent investigation experience may be considered by the Division in collaboration with the Board. Section 302d is being added to clarify supervision requirements for a deception detection intern. Section 306-Clear Criminal History: entire section is being deleted as there is no statutory authority allowing the Division to access the Utah Bureau of Criminal Identification records. Section 502-Unprofessional Conduct: additions are made to the unprofessional conduct section to address changes in terminology within the industry and to also adopt the American Polygraph Association code of ethics and standards of practice.</p>
7.	<p>Aggregate anticipated cost or savings to:</p> <p>A) State budget:</p> <p>The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed within the Division's current budget.</p> <p>B) Local government:</p> <p>Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed rule amendments only apply to deception detection examiners and interns and applicants for licensure in those classifications.</p> <p>C) Small businesses (fewer than 50 employees) AND persons other than businesses:</p> <p>Proposed amendments only apply to deception detection examiners and interns and applicants for licensure in those classifications. Applicants for licensure in the above classifications will see a savings of the fingerprint fee of \$35 per applicant. The Division licenses approximately 1-2 deception detection applicants per year for an aggregate savings of \$70 per year.</p>
8.	<p>Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency):</p> <p>Proposed amendments only apply to deception detection examiners and interns and applicants for licensure in those classifications. Applicants for licensure in the above classifications will see a savings of the fingerprint fee of \$35 per applicant.</p>
9.	<p>Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>No fiscal impact to businesses is anticipated with this rule filing which clarifies existing procedures and the standards of practice. Francine A. Giani, Executive Director</p>
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</p> <p>Section 58-64-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)</p>
11.	<p>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):</p> <p>Adds American Polygraph Association Code of Ethics, dated January 10, 1999, and Standards of Practice, dated January 20, 2007</p>
12.	<p>The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i>. See Section 63-46a-5 and Rule R15-1 for more information.)</p> <p>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 12/17/2007</p>

B) A public hearing (optional) will be held:		
on (mm/dd/yyyy):	at (time):	At (place):
11/21/2007	9:00 am	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah
13.	This rule change may become effective on (mm/dd/yyyy):	
	12/24/2007	
NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):	
	licensing	deception detection examiner
	deception detection intern	
15.	Attach an RTF document containing the text of this rule change (filename):	R156-64.pro
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.		
AGENCY AUTHORIZATION		
Agency head or designee, and title:	F. David Stanley, Director	Date (mm/dd/yyyy): 10/24/2007

R156. Commerce, Occupational and Professional Licensing.

R156-64. Deception Detection Examiners Licensing Act Rule[s].

R156-64-101. Title.

Th[ese]is rule[s-are]is known as the "Deception Detection Examiners Licensing Act Rule[s]".

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or th[ese]is rule[s]:

(1) "Clinical testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(~~[[1]~~2) "~~[Control]~~Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(3) "Deception detection case file" means written records of a polygraph exam including:

(a) case information;

(b) examinee information;

(c) a list of all questions used during the examination;

(d) copies of all charts recorded during the examination;

and

(e) either the audio or video recording of the examination.

(4) "Experienced deception detection examiner" means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(~~[[2]~~5) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(~~[[3]~~6) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of ~~[control]~~comparison questions.

(7) "Post conviction sex offender testing" means testing of sex offenders and includes:

(a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue examinations.

(~~[[4]~~8) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(~~[[5]~~9) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(10) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue.

(11) "Specific issue/single issue examination" means a deception detection examination administered to determine the

examinee's truthfulness concerning one narrowly defined issue.

(12) "Pre-employment exam" means a deception detection screening examination administered as part of a pre-employment background investigation.

(~~6~~13) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(~~5~~1)(e), in Section R156-64-502.

R156-64-103. Authority - Purpose.

Th~~ese~~is rule~~s are~~is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 64.

R156-64-201. Education Peer Committee created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Deception Detection Education Peer Committee.

(a) The duties and responsibilities of the Deception Detection Education Peer Committee are conduct an oral interview on behalf of the Board to evaluate the deception detection intern's performance and make a recommendation to the Board to:

(i) approve the application; or

(ii) deny the application but extend the intern period.

(b) The composition of the Deception Detection Education Peer Committee shall be three deception detection examiners licensed in Utah who are not members of the Deception Detection Examiners Licensing Board.

R156-64-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-64-302(1)(c) and 58-64-302(2)(c), each applicant shall provide the following:

(1) a certification issued by the Bureau of Criminal Identification, Utah Department of Public Safety concerning the applicant's criminal history, ~~[except if]~~unless the applicant is a peace officer as defined in Title 53, Chapter ~~6~~13, in good standing, in which case a certification is not required~~+~~

~~(2) two fingerprint cards containing the fingerprints of the applicant; and~~

~~(3) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of the records of the Federal Bureau of Investigation and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant].~~

R156-64-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i) the bachelor's degree shall have been earned from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.

(2) In accordance with Subsections 58-64-302(1)(f)(ii) and

58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency, or other equivalent investigation experience approved by the Division in collaboration with the Board.

(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.

(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:

(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and

(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.

R156-64-302d. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

(1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;

(2) if the deception detection intern is performing post conviction sex offender testing, the supervision deception detection examiner shall hold a certification for post conviction sex offender testing by the American Polygraph Association; and

(3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-304. Continuing Education.

(1) In accordance with ~~[Section]~~ Subsections 58-1-203(~~[7]~~1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of a license in the classification of deception detection examiner.

(2) Continuing education shall consist of 60 hours of qualified continuing professional education in each preceding two year period of licensure or expiration of licensure.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(4) Qualified continuing professional education shall consist of the following:

(a) A minimum of 30 hours shall be from institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction directly relating to deception detection; and

(b) 30 hours may be in the following college courses with one college credit being equal to 15 hours;

- (i) psychology;
- (ii) physiology;
- (iii) anatomy; and
- (iv) interview and interrogation techniques.

(5) A deception detection examiner who instructs an approved course shall be given double credit for the first presentation.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.[]

~~R156-64-306. Clear Criminal History.~~

~~—(1) In accordance with Section 58-1-203(7) and 58-1-308(3)(b), there is created a clear criminal history requirement as a condition for renewal or reinstatement of a license issued under this chapter.~~

~~—(2) Each applicant shall submit documents and fees as set forth in Section R156-64-302a.]~~

R156-64-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) not immediately terminating the examination upon the request of the examinee;

(2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;

(3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

(4) basing decisions concerning truthfulness or deception upon less than:

(a) two charts for a pre-employment exam;

(b) two charts for a screening exam that is to be followed by a specific issue exam; or

(c) three charts for all other exams~~[two repetitions of each question during pre-employment or routine examinations; or~~

~~—(b) three repetitions of each question during specific or criminal examinations];~~

(5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;

(6) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the division in collaboration with the board;

(7) using a polygraph instrument that does not record as a minimum:

(a) ~~[properly functioning respiration]~~respiration patterns

recorded by two pneumograph components recording thoracic and abdominal patterns;

(b) ~~[galvanic skin response; and]~~electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

(c) ~~[cardiovascular response]~~relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

(d) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

(e) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;

(8) conducting more than five deception detection examinations in a 24 hour period;

(9) conducting an examination of less than a 90 minute duration;

(10) conducting a pre-employment ~~[or periodic]~~ examination of less than a 60 minute duration;

(11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(12) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is demonstratable overriding reason;

(13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;

(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;

(16) conducting an examination:

(a) on a person who is under the influence of alcohol or drugs; or

~~(b) [on a person who is pregnant except for a voice stress examination;~~

~~—(c)—~~on a person who is under the age of 14 without written permission from ~~[their]~~the person's parent or guardian; ~~[or~~

~~—(d) on a person who is under medical counseling without written permission from a health care provider;]~~

(17) not providing at least 20 seconds between the ~~[end]~~beginning of one question and the beginning of the next~~[, except when the examiner is utilizing a voice stress analyzer];~~

(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(19) failing to obtain a release from the individual being

examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(~~[18]~~20) not using a numerical scoring system in all specific examinations;

(~~[19]~~21) not creating and maintaining a record for every examination administered;

(~~[20]~~22) creating records not containing at a minimum the following:

(a) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(b) an index, either chronological or alphabetical, listing:

(i) the names of all persons examined;

(ii) the type of exam conducted;

(iii) the date of the exam;

(iv) the name of the examiner;

(v) the file number in which the records are maintained;

(vi) the examiner's written opinion of the test results;

and

(vii) the time the examination began and ended;

(c) all written reports or memoranda of verbal reports;

(d) a list of all questions asked while the instrument was recording;

(e) background information elicited during the pre-test interviews;

(f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(g) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(h) any recordings made of the examination; and

(i) documentation of an instrument [calibration] functionality check on a quarterly basis including a calibration chart~~[, except for computerized deception detection instruments or computerized voice stress analyzers; and]~~

(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(24) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post conviction sex offender testing;

(~~[21]~~25) not maintaining records of all deception detection examinations for a minimum of three years; and

(26) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated January 10, 1999, and Standards of Practice, dated January 20, 2007, which are hereby incorporated by reference.

KEY: licensing, deception detection examiner[*], deception
detection intern

Date of Enactment or Last Substantive Amendment: [~~August 15,~~
~~1997~~]2007

Notice of Continuation: April 9, 2007

Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-
1-106(1) (a); 58-1-202(1) (a)